IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1529 of 2006

In

SECOND APPEAL NO. 887 of 2003

1. Dharamaji Shankar Shinde
and Ors. ... Applicants

V/s

1. Rajaram Shripad Joshi
and Ors. ... Respondents

Shri S.P.Thorat for Applicants
Shri BNalasaheb Deshmukh i/b Uday Walrunjikar for Respondent no.1

CORAM:S.R.SATHE,J.

DATED:18th October 2006

P.C.:-

1. Heard both the learned Advocates. Perused the record.

2. From the perusal of the record it is clear that the suit filed by the plaintiffs for redemption of mortgage was dismissed by the trial Court. Being aggrieved plaintiffs filed Regular Civil Appeal No.350 of 1994.

The same was allowed on 12-5-2002. Being aggrieved by the same the original defendants have filed the present second appeal.

3. On 4-12-2003 this Court (Coram:J.A.Patil,J) after hearing both the learned Advocates adjourned the matter for admission and in the meantime directed the parties to maintain status quo. The said order was thereafter continued from time to time.

4. Thereafter it was informed to the Court that Respondent no.4 Sitabai has expired and as such it is necessary to bring her heir on record. For that purpose the matter was adjourned from time to time and ultimately the order was passed by this Court directing the other Respondents to give details about the heir of deceased Sitabai so as to enable the Appellant to bring Sitabai's heirs on record. The learned Advocate for the Respondents submitted that accordingly he gave the details to the other side by his letter dated 9-3-2006. Of course, no death certificate was given at that time. However, on 18-3-2006 this Court by way of last opportunity granted two weeks' time to file Civil Application and it was made clear that no further adjournment will be granted and if Civil Application is not filed within that period the matter shall automatically stand dismissed for want of prosecution. In fact it was necessary to mention that matter shall stand dismissed for want of prosecution only against

respondent no.4. It seems that no steps were taken accordingly within two weeks thereafter. It is needless to say that the steps were in fact to be taken by the Appellant for bringing heirs and not by the Respondents. As a result of typographical error it is mentioned respondent. Be that as it may, now it has transpired that heirs of Sitabai i.e. Respondent no.4 are already on record and as such now there is no hurdle in proceedings with the appeal provided it is restored.

5. The learned Advocate appearing on behalf of the Respondents fairly submitted that he has no objection for restoration of the appeal, however, he has strong objection about granting interim relief. He submitted that though the matter is of the year 2003 the same is not admitted as yet and the applicants did not take necessary steps in that behalf as interim relief was already granted in their favour. However, it must be noted that at one stage the matter had remained pending for bringing heirs of Respondent no.4 and under such circumstances it was adjourned.

6. Now having realised the fact that heirs of Respondent no.4 are already on record, I think that in the interest of justice it is necessary to restore the matter and fix the second appeal for admission.

7. The learned Advocate for the Respondents submitted that Respondents original plaintiffs have already

initiated execution proceedings, but admittedly the decree has not been executed till today. Under such circumstances in the interest of justice it is necessary to continue the interim order passed initially on 4-12-2003 atleast till the admission of the matter.

8. Hence the second Appeal No.887 of 2003 is restored. Ad-interim order passed on 4-12-2003 is to continue till 4-12-2006. In the meantime the parties are at liberty to move the Court for placing the matter for admission. The learned Advocate for the Applicants has submitted that he will in fact take necessary steps for admission and it is not the intention of the applicant to prolong the matter. Office to place the Second Appeal for admission after reopening of the Court after Diwali vacation.

(S.R.SATHE,J.)